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## MUSTAFA KAMAL MAUGHANI

**v.**

## SURUHANJAYA KOMUNIKASI & MULTIMEDIA MALAYSIA

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HIGH COURT MALAYA, KUALA LUMPUR
KANG HWEE GEE J
[ORIGINATING SUMMONS NO: S1-24-1332-2000]
11 OCTOBER 2005

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***LABOUR LAW:*** *Employment - Termination of service - Employee charged for corruption - Whether employer need not wait until sessions court's decision on employee's guilt - Whether legitimate for employer to terminate services on grounds of public interest - Malaysian* D *Communications and Multimedia Commission Act 1998, ss. 16, 30*

The plaintiff, an employee of the defendant, was holding a senior position as general manager of corporate services on a fixed term contract of service. On 6 April 1999, the plaintiff was arrested and subsequently charged on 21 March 2000, for three counts of E corruption under s. 10(a)(aa) of the Anti Corruption Act 1997. On 31 March 2000, the defendant served the plaintiff with a notice to show cause. In the plaintiff's reply, it was suggested that he should only be interdicted pending the decision of the sessions court as to his guilt. The defendant disagreed with the plaintiff and F sent the notice of termination terminating the services of the plaintiff on ground of public interest. The plaintiff disputed the allegation that the defendant had been embarrassed and its public image affected by the charges of corruption preferred against the plaintiff. The plaintiff further contended that the embarrassment G caused to the defendant was not of sufficient gravity so as to cause an infringement of the public interest of the defendant and not serious enough for the defendant to terminate his services.

**Held (dismissing plaintiff's application):**

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**(1)** Under s. 30 of the Malaysian Communications and Multimedia Commission Act 1998 ('the Act') the power to decide whether or not an employee of the Commission had committed one act or another prejudicial to the Commission which may I tantamount to a breach of public interest is for the Commission to decide, specifically s. 30(1) and (2). It is the business of the Commission to decide on an objective basis

whether or not the services of its employee should be terminated in the public interest. The provision is consistent with the public nature of the Commission as spelt out in the Preamble to the Act and s. 16 of the Act. (para 7)

**(2)** The Commission had considered its position with respect to the employment of the plaintiff correctly. The offence of corruption involves acts which are degrading and contain elements of dishonesty and improper performance of one's duties. Given that the plaintiff was holding a position of responsibility there could be little doubt that his continued employment with the Commission would have the tendency to put the image of the Commission into odium and disrepute in the minds of right thinking members of society. Accordingly, the defendant need not wait until the sessions court decides on the guilt of the plaintiff. (para 7)

**(3)** The very fact that the plaintiff had been charged in court with the corruption charges mentioned hereinbefore was sufficient to bring the image of the Commission into odium and disrepute. It was therefore legitimate for the defendant to terminate his services on grounds of public interest so as not to preserve its standing as a public body. (para 7)

**Legislation referred to:**
Anti Corruption Act 1997, s. 10(a)(aa)
Malaysian Communications and Multimedia Commission Act 1998, s. 16, 30(1), (2)

*For the plaintif - Mohd Firuz Jaffril; M/s Firuz Jaffril & Co*
*For the defendant - Steven Thiru (R Visalrani with him); M/s Shook Lin & Bok*

*Reported by Suhainah Wahiduddin*

## JUDGMENT

**Kang Hwee Gee J:**

**[1]** This is an application by the plaintiff for the following orders as stated in the amended originating summons (encl. 20):

(i) that the dismissal and the termination of the Plaintiff's

A contract for services as Head, Corporate Services Division, Communications and Multimedia Commission under Section 30 Malaysia Communication and Multimedia Commission Act 1988 on ground of public interest is invalid and/or wrong in law as the Plaintiff has not been found guilty by any Court in Malaysia on the corruption charges;

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(ii) that the dismissal and the terminating of the Plaintiff's contract for services as Head, Corporate Services Division, Communications and Multimedia Commission under Section 30 Malaysia Communication and Multimedia Commission Act 1998 on ground of public interest is invalid and/or wrong in law as the corruption charges brought against the Plaintiff in Shah Alam Sessions Court (Case No.: 62-10-2000 & 62-11-2000) is not in his capacity as Head, Corporate Services Division but in the capacity as Director, Penang Port Sdn Bhd.

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**[2]** The plaintiff was an employee of the defendant. The plaintiff held a senior position as General Manager of Corporate Services on a fixed term contract of service and the scope of his employment is as spelt out in exh. MK1, encl. 8 (the letter of E appointment), which reads as follows:

Letter of Appointment

| | | | |
|---|---|---|---|
| 1) | Designation | : | Head, Corporate Service Division (subject to different designation if necessary) |
| 2) | Area of responsibility | : | Administration, finance and human resources. (subject to review if necessary) |
| 3) | Contract Period | : | 3 years with effect from 1st January 1999 |
| 4) | Salary | : | RM10,000 per month with an increment of RM500 per month in year 2 and year 3 |
| 5) | EPF | : | Employer 15%<br>Employee 11% |
| 6) | Car | : | You will be eligible for use of a company car with driver |
| 7) | Other Terms and Conditions | : | as per terms and conditions of service for senior manager |

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If you accept this appointment and the above terms and conditions, could you please signify your acceptance by signing and returning the copy of this letter. A formal contract will be drawn up in due course.

I congratulate you on this appointment and look forward to a mutually satisfying career with the Commission.

Signed
Dr. Syed Hussein Mohamad
Chairman.

**[3]** At the same time the plaintiff also held a non-executive directorship with Penang Port Sdn Bhd. On 6 April 1999, the plaintiff was arrested and was subsequently charged on 21 March 2000, for three (3) counts of corruption under s. 10(a)(aa) of the Anti Corruption Act 1997. The charges preferred against him were as follows (see exh. MK6, exh. MK7 and exh. MK8 of encl. 8):

(1) Bahawa kamu Mustafa Kamal bin Maughani, pada bulan Oktober 1998, bertempat di "Coffee House" Melting Pot, Hotel Concorde, Shah Alam, di dalam daerah Petaling, di dalam Negeri Selangor Darul Ehsan, telah secara rasuah meminta bagi diri kamu satu suapan iaitu wang berjumlah RM250,000.00 daripada Tan Pay Kong, Pengarah Urusan Syarikat Kantan Jaya Marine Service (PG) Sdn Bhd, sebagai upah untuk kononnya telah membantu Syarikat tersebut mendapatkan kontrak Bot Tunda bernilai RM9 juta daripada Penang Port Sdn Bhd dan untuk tidak menganggu perkhidmatan Bot Tunda Syarikat berkenaan, dan dengan itu, kamu telah melakukan satu kesalahan di bawah seksyen 10(a)(aa) Akta Pencegahan Rasuah 1997 yang boleh dihukum di bawah seksyen 16 Akta yang sama.

(2) Bahawa kami Mustafa Kamal bin Maughani dan Che Wan Chik bin Din, pada 6.4.1999, lebih kurang jam 2.50 petang, bertempat "Coffee House" Melting Pot, Hotel Concorde, Shah Alam, di dalam Negeri Selangor Darul Ehsan, dengan niat bersama kamu berdua, telah secara rasuah meminta bagi diri kamu satu suapan iaitu wang berjumlah RM250,000.00 daripada Tan Pay Kong, Pengarah Urusan Syarikat Kantan Jaya Marine Service (PG) Sdn Bhd, sebagai upah untuk kononnya telah membantu syarikat tersebut mendapatkan kontrak Bot Tunda daripada Penang Port Sdn Bhd dan sebagai dorongan untuk membantu mendapatkan kontrak perkhidmatan Bot Pilot daripada Penang Port Sdn Bhd dan

dengan itu, kamu berdua telah melakukan kesalahan di bawah seksyen 10(a) (aa) Akta Pencegahan Rasuah 1997 yang boleh dihukum di bawah seksyen 16 Akta yang sama dan dibaca bersama seksyen 34 Kanun Keseksaan.

(3) Bahawa kamu Mustafa Kamal bin Maughani dan Che Wan Chik bin Din, pada 6.4.1999, lebih kurang jam 2.50 petang, bertempat "Coffee House" Melting Pot, Hotel Concorde, Shah Alam, di dalam Negeri Selangor Darul Ehsan, dengan niat bersama kamu berdua, telah secara rasuah menerima satu suapan iaitu wang berjumlah RM50,000.00 daripada Tan Pay Kong, Pengarah Urusan Syarikat Kantan Jaya Marine Service (PG) Sdn Bhd, sebagai upah untuk kononnya telah membantu mendapatkan kontrak Bot Tunda daripada Penang Port Sdn Bhd dan untuk tidak menganggu perkhidmatan Bot Tunda Syarikat tersebut, dan dengan itu, kamu berdua telah melakukan satu kesalahan di bawah seksyen 10(a) (aa) akta Pencegahan Rasuah 1997 yang boleh dihukum di bawah seksyen 16 Akta yang sama dan dibaca bersama seksyen 34 Kanun Keseksaan.

**[4]** Subsequently, on 31 March 2000 the defendant served the plaintiff with a notice to show cause, which reads as follows (see exh. MK10 of encl. 8):

**Contract of Employment**

We refer to your contract of employment dated 18 December 1998 wherein you were employed on a contract basis for a period of three (3) years with effect from 1 January 1999 as Head, Corporate Services Division, in charge of administration, finance and human resource.

2. In this regard we hereby write to inform you that the Commission has received a report which states that on 21 March 2000 you were charged at the Shah Alam Sessions Court with three charges of Corruption under the Prevention of Corruption Act 1997 and that you were allowed bail at RM10,000 and ordered to surrender your travel documents to the Court. The trial has been set for 11-13 September 2000. According to the report, these three charges of corruption relate to soliciting and axxepting gratification in connection with your position as a Director of Penang Port Sdn Bhd. The Commission notes that one of the charges relates to alleged solicitation of gratification in October 1998 before you were employed by the Commission while two reldte to the soliciting and receipt of gratification respectively which allegedly took place on 6 April 1999 ie, whilst you were already an employee of the Commission.

3. The Commission also notes from the notes from the report that the above charges against you have received considerable media publicity and that the newspaper reports had identified you as a General Manager of the Commission.

4. The Commission being a body corporate under the Malaysian Communications and Multimedia Commission Act 1998 (the "Act") is the regulatory, investigative and enforcement body for the communications and multimedia industry in Malaysia. The Commission has been embarrassed and its public image and reputation have been effected by the fact that you as one of its senior management personnel have been charged for corruption by the Badan Pencegah Rasuah.

5. In the circumstances the Commission is now contemplating invoking its powers under section 30(1) and (2) of the Act and to termination your services in the public interest.

6. Although the Commission is not obliged to allow you a right of hearing, it is nevertheless giving you an opportunity to make representations in writing so as to enable you to put forward all facts and circumstances, in your favour, for the Commission's consideration before it makes a decision as to whether or not your services should be terminated in the public interest. Accordingly you are hereby informed that if you desire to make representations in writing to the Commission, then the same should be submitted to the office of the Chairman of the Commission before 12.00 noon on Monday, 3 April 2000.

Yours faithfully
Signed
Dr. Syed Hussein Mohamad

**[5]** The plaintiff replied to the notice of show cause suggesting that he should only be interdicted pending the decision of the Sessions Court as to his guilt (see exh. MK11, encl. 8). The defendant did not agree with the plaintiff and it sent the notice of termination terminating the services of the plaintiff in the public interest, as spelt out in the letter dated 7 April 2000, which reads as follows (see MK12 of encl. 8):

**Contract of Employment**

We refer to our letter to you dated 31 March 2000 in respect of the above matter and your reply thereto by letter dated 3 April 2000.

A 2. We write to inform that the Commission has duly considered your written representations and all relevant circumstances pertaining to the matter and has come to the conclusion that your services ought to be terminated in the public interest with immediate effect under section 30(2) of the Malaysian
B Communications and Multimedia Commission Act 1998.

3. Please note that you are to immediately return to the Commission all documents, files, key access card, computer diskettes and other items belonging to the Commission that may be in your possession. Kindly acknowledge receipt by signing and
C returning the duplicate of this letter.

**[6]** The plaintiff disputes the allegation of the defendant that the defendant has been embarrassed and its public image has been affected by the charges of corruption preferred against the plaintiff. The plaintiff further contends that the embarrassment caused to
D the defendant is not of sufficient gravity so as to cause an infringement of the public interest of the defendant and not serious enough for the defendant to terminate his service.

**[7]** Having heard the submissions of both parties, my decision is
E as follows:

1. Public interest is essentially in the public law domain as it applies to the civil service. Under s. 30 of the Malaysian Communications and Multimedia Commission Act 1998 (the
F "Act") the power to decide whether or not an employee of the Commission had committed one act or another prejudicial to the Commission which may tantamount to a breach of public interest is for the Commission to decide. Specifically, s. 30(1) and (2) provides as follows:

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(1) Where the Commission finds or where representations are made to the Commission that it is desirable that the service of an employee be terminated in the public interest, the Commission may call for a full report from the superior officer of the employee which shall contain particulars relating
H to the work and conduct of the employee.

(2) If, after considering the report received under subsection (1), the Commission is satisfied that having regard to the conditions of service, the usefulness of the employee, the work and conduct of the employee and all the other
I circumstances of the case it is desirable in the public interest

so to do, the Commission may terminate the service of the employee with effect from such date as the Commission shall specify.

2. It is clear therefore it is the business of the Commission to decide on an objective basis whether or not the services of its employee should be terminated in the public interest. The provision is consistent with the public nature of the Commission which is spelt out in the Preamble to the Act and s. 16 of Act, which both read as follows:

> An Act to provide for the establishment of the Malaysia Communications and Multimedia Commission with powers to supervise and regulate the communications and multimedia activities in Malaysia, and to enforce the communications and multimedia laws of Malaysia, and for related matters.
>
> 16(1) The Commission shall have all the functions imposed on it under the communications and multimedia laws and, without prejudice to the generality of the foregoing, the Commission shall also have the following functions:
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> (a) to advise the Minister on all matters concerning the national policy objectives for communications and multimedia activities;
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> (b) to implement and enforce the provisions of the communications and multimedia laws;
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> (c) to regulate all matters relating to communications and multimedia activities not provide for in the communications and multimedia laws;
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> (d) to consider and recommend reforms to the communications and multimedia laws;
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> (e) to supervise and monitor communications and multimedia activities;
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> (f) to encourage and promote the development of the communications and multimedia industry including in the area of research and training;
>
> (g) to encourage and promote self-regulation in the communications and multimedia industry;

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(h) to promote and maintain the integrity of all persons licensed or otherwise authorised under the communications and multimedia laws;

(i) to render assistance in any form to, and to promote cooperation and coordination amongst, persons engaged in communications and multimedia laws; and

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(j) to carry out any function under any written law as maybe prescribed by the Minister by notification published in the Gazette.

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(2) The Commission shall have all such powers as may be necessary for, or in connection with, or reasonably incidental to, the performance of its functions under the communications and multimedia laws.

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3. It is not surprising therefore that the Act has introduced a public law element to confer upon the Commission the right to decide whether a particular act or misconduct has contravened public interest much in the same way as public services will do in cases involving government servants.

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4. Where the Commission is empowered to decide on whether a particular conduct of its employee had contravened public interest it is open to any person who is aggrieved to challenge the objectivity of its findings as the plaintiff has done so in this case.

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5. Having considered the seriousness of the charge which the plaintiff is presently facing before the Sessions Court I can come to no other conclusion other than that the Commission had considered its position with respect to the employment of the plaintiff correctly. The offence of corruption involves acts which are degrading and contain elements of dishonesty and improper performance of one's duties. Given that the plaintiff was holding a position of responsibility there could be little doubt that his continued employment with the Commission would have the tendency to put the image of the Commission into odium and disrepute in the minds of right thinking members of society. Accordingly, the defendant need not wait until the Sessions Court decides on the guilt of the plaintiff.

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6. The very fact that the plaintiff has been charged in court with the corruption charges mentioned hereinbefore is sufficient to bring the image of the Commission into odium and disrepute. It was therefore legitimate for the defendant to terminate his services on grounds of public interest so as not to preserve its standing as a public body.

**[8]** The plaintiff's application is accordingly dismissed with costs.